HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL NO. 466 OF 2006

BETWEEN:

Ch.Kiron & others

.....Appellants

And

Project Director and Special Collector, Land Acquisition, Hyderabad & others

.....Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri M.V. Durga Prasad

Counsel for Respondents : Government Pleader for

Land Acquisition

Shri V. Raja Gopal Rao

Dated: 28-04-2006

Per G.S. SINGHVI, CJ

Feeling dissatisfied with the partial relief granted to them by the learned Single Judge in an application filed under Section 151 of the Code of Civil Procedure, which was registered as W.P.M.P.No.9351 of 2006, the appellants have filed this appeal under Clause 15 of the Letters Patent.

Shri M.V. Durga Prasad, learned counsel for the appellants, with his usual persuasiveness, argued that even though interlocutory order passed in one case cannot be treated as a precedent for other cases, judicial propriety demands that similar orders should be passed in similar cases. He pressed this point by relying on **Vishnu Traders v. State of Haryana.** Shri Durga Prasad then referred to order dated 13.04.2006 passed in Writ Petition No.7222 of 2006 and submitted that once the learned Single Judge, who dealt with that petition, felt convinced that there exist strong prima facie case in favour of the writ petitioners, who had challenged the proceedings of acquisition initiated under the Land Acquisition Act, 1894 (for short 'the Act'), and granted an order of status quo, similar order should have been passed in the case of the appellants as well because, they too have challenged similar acquisition proceedings. Shri Durga Prasad took us through the various events leading to the filing of Writ Petition No.10177 of 2005 in which the appellants had questioned the notification dated 06.12.2003, as amended by notification dated 08.12.2004, as also notification dated 09.12.2004 and argued that partial dismissal of that petition by the learned Single Judge and dismissal of Writ Appeal No.2586 of 2005 by the Division Bench albeit with liberty to the appellants to raise all objections, including the one relating to notification issued under Section 4(1) of the 1894 Act, are clear indicative of the fact that all is not well with the acquisition of land belonging to the appellants, who are opposed to the party in power in the State. Learned counsel submitted that in furtherance of liberty given by the learned Single Judge to the concerned authority to proceed with enquiry beyond the stage of Section 4(1), his clients had filed detailed written objections, but without adverting to the same and in complete disregard of the mandate of the provisions contained in the Andhra Pradesh Urban Areas (Development) Act, 1975 and the Rules framed there under, the land of his clients is being acquired. He emphasized that indirect refusal of the Special

Land Acquisition Officer to supply the documents, which have direct bearing on the appellants' objection to the proposed acquisition of land, shows the biased attitude of the officers concerned. Shri Durga Prasad submitted that the land in question is earmarked for offices and residential purposes and without changing the use of the land, the State Government cannot acquire the same for laying outer ring road.

Shri P. Raja Gopal Rao, learned Advocate representing the respondents submitted that the grounds of challenge taken in Writ Petition No.7222 of 2006 **(Dr. T. Gopala Rao and another v. The Land Acquisition Officer, HUDA, Hyderabad and others)** are substantially different from those taken in the writ petition filed by the appellants. He then pointed out that enquiry under Section 5-A of the Act was completed, after giving due notice and substantive opportunity of hearing to the petitioners-appellants. Shri Rao also pointed out that after finalization of enquiry under Section 5-A of the Act on 19.01.2006, declaration under Section 6 was issued on 14.02.2006, award was passed on 06.04.2006 and physical possession of the land was taken on 24.04.2006. On the strength of these assertions, learned counsel argued that the appellants' case cannot be treated as similar to that of the writ petitioners, who have filed Writ Petition No.7222 of 2006. Shri Rao further submitted that the award enquiry is yet to be completed in relation to the subject matter of Writ Petition No.7222 of 2006 and, therefore, the two cases are factually different insofar as the prayer for interim relief is concerned.

We have thoughtfully considered the respective arguments. We entirely agree with Shri Durga Prasad that even in interlocutory orders, there should be consistency in the approach of the Court. Once an order is made by the learned Single Judge or Division Bench, albeit after due consideration of the facts and material brought on the record of the case, similar order should ordinarily be passed by Coordinate Benches, provided that on factual and legal premises the two cases are similar. However, this rule of judicial prudence is not of absolute application and if the Court feels convinced that despite apparent similarity in the subject matter of two cases, the grounds or substratum of challenge are different, a departure can be made from the rule of consistency.

For determination of the question whether the Court should grant an

order of status quo or restrain the respondents from taking steps in furtherance of the acquisition proceedings initiated under Section 4(1) of the Act, the Court is duty-bound to keep in mind the four well-known factors i.e. strong prima facie case, balance of convenience, irreparable injury and more importantly the larger public interest. The admission of a writ petition or issue of notice to respondents to show case is merely indicative of the existence of prima facie or strong prima facie case. However, before passing an order of interim injunction, the Court must feel convinced that the balance of convenience is in favour of the petitioner and further that he/she/it will suffer irreparable loss if an interim relief is not granted. In such cases, the Court may refuse interim relief despite the existence of first two indicias, namely, strong prima facie case and balance of convenience, if it comes to the conclusion that the grant of injunction would be injurious to larger public interest.

Adverting to the order under challenge, we find that after taking note of the averments contained in the writ petition and the application for interim relief, the learned Single Judge, while issuing notice to the learned Government Pleader for Land Acquisition, declared that any user or alteration of the land of the petitioners shall be subject to further order in W.P.M.P. This shows that the learned Single Judge is yet to finally adjudicate on the merits of the appellants' prayer for interim relief. The arrangement made by the learned Single Judge by directing that any user or alteration of the land shall be subject to further orders is purely tentative and it is difficult to appreciate why the appellants have filed this appeal. That apart, learned counsel for the appellants has not been able to convince us that the discretion exercised by the learned Single Judge in not entertaining his clients' prayer for absolute stay is perverse or is contrary to the settled legal canons, which govern the exercise of discretion in the mater of grant of interim relief.

Since the matter is likely to be heard by the learned Single Judge on 06.06.2006 on the merits of the appellants' prayer for total stay, it would not be prudent for us to express opinion on the merits and demerits of their claim. Suffice it to say that it will be open to the parties to convince the learned Single Judge on the desirability or otherwise of passing or not passing absolute stay or even partial stay and we have no doubt that the learned Single Judge will examine the prayer of the appellants and pass appropriate orders, by taking

into consideration relevant factors and parameters, which govern the exercise of discretion in such matters, and above all the larger public interest.

As a result of the above discussion, we hold that the discretion exercised by the learned Single Judge at an interlocutory stage does not suffer from any infirmity, warranting further judicial intervention by the Division Bench. Hence, the appeal is dismissed.

While disposing of the appeal, we deem it necessary to emphasize the imperative need of vigilance on the part of the public authorities, who have been entrusted with the task of implementing what is considered as one of the most important projects for the city of Hyderabad. This city has been inviting many thousand crores of investment from all over the country and abroad. Needless to say that availability of sound infrastructure is sine qua non for attracting investment. We can take notice of the chaotic conditions in relation to traffic prevailing in another advanced city of country i.e. Banglore which prompted the Central cabinet to take a decision to immediately approve the project for metro rail and Bangalore-Mysore highway. These projects are of immense public importance and any impediment by the executive apparatus of the State in implementation of these projects must be viewed with grave adversity. Even judicial intervention in such matters has to be made with great caution and circumspection. The Courts cannot lose sight of the fact that delay in implementation of public-oriented projects adds to the huge cost in its execution. Even a single day's delay enhances the cost by few crores of rupees, which has naturally to be born by the public at large.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

28.04.2006

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